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NECA NATIONAL EXCHANGE
CARRIER ASSOCIATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Richard A. Askoff
Associate General Counsel

October 20, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: AMERICAN TELEPHONE AND TELEGRAPH
COMPANY

Petition for the Establishment of
Additional Standards to Govern
Study Area Boundary Changes in
Connection with the Transfer of
Service Territories Between or
Among Local Exchange Carriers

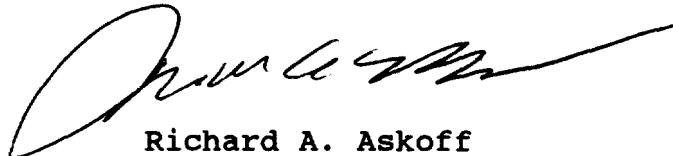
R. M. 8334

Dear Mr. Caton:

Enclosed herewith for filing with the Commission are the original
and five copies of the National Exchange Carrier Association,
Inc.'s Comments in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the
duplicate copy of this letter furnished herewith for such
purposes and remitting same to bearer.

Very truly yours,



Richard A. Askoff

RAA/bas
Enclosures

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CCB

OCT 20 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY)

Petition for the Establishment)
of Additional Standards to Govern)
Study Area Boundary Changes in)
Connection with the Transfer of)
Service Territories Between or)
Among Local Exchange Carriers)

RM 8334

COMMENTS

The National Exchange Carrier Association, Inc. (NECA)¹ submits the following comments in response to AT&T's September 3, 1993, rulemaking petition in the above-captioned proceeding. AT&T proposes that the Commission require submission of detailed information in connection with transfers of service territories between and among telephone companies.² The proposed requirements would apply to all such transactions, regardless of the number of access lines involved or the impact on high cost support.

NECA believes that imposition of inflexible reporting requirements is not necessary. The Commission should instead streamline the process for obtaining waivers of the frozen study area boundary rule, by adopting rule revisions proposed in CC Docket 80-286 that have been pending since 1990. As discussed

¹ NECA is a not-for-profit membership association. NECA members include all local exchange carriers in the United States, Puerto Rico and the U. S. Virgin Islands, serving over 1400 study areas.

² AT&T Petition at 1-2.

herein, the waiver procedures proposed in that proceeding will reduce unnecessary paperwork and delay, while allowing the Commission the flexibility to obtain additional information on particular transactions where necessary.

I. THE COMMISSION HAS ACCESS TO ALL OF THE DATA IT NEEDS TO DETERMINE WHETHER GRANT OF A WAIVER IS IN THE PUBLIC INTEREST.

AT&T requests that the Commission require all telephone companies purchasing an exchange to submit detailed information as to the impact of a proposed transaction on the high cost fund and the valuation of the exchange assets involved in the transaction.³

NECA believes that adoption of rules requiring additional data reporting requirements is unnecessary and flatly inconsistent with the Commission's longstanding commitment to lessening regulatory burdens. This is particularly true with respect to transactions that involve only small numbers of access lines, or that otherwise

³ AT&T Petition at 10. Specifically, AT&T would require parties to submit data on the book value of the plant being sold, the date of installation and depreciation rate of the plant, the subscriber plant factor ("SPF") of loop assets involved, the dial equipment minutes ("DEM") factor of any switches being sold, the depreciation reserves of all assets in the transaction, the number of miles of subscriber loop plant being sold, the excess deferred taxes for the assets being sold, pro-forma revenue requirement calculations, pre- and post-sale, the accounting plans of the buyer to book the purchase price and construction costs, information as to whether the buyer intends to request waiver of section 32.2005 of the Commission's rules, any outstanding state commission order or plan that creates an obligation on the selling telephone company to upgrade or extend existing service, the extent to which the selling telephone company's current rates are based on these obligations, and, if applicable, the construction and investment plan of the buyer that will accomplish the upgrading and extension mentioned in the petition.

have no significant impact on USF expense adjustments.⁴

Some of the data AT&T requests is routinely provided as part of waiver requests. Waiver requests that have been submitted to the Commission state impacts on high cost support flows, describe state commission involvement, and explain the public interest benefits of the proposed transactions.⁵ Moreover, the Commission has full authority to request additional data as it deems necessary, and has in fact requested such information on occasion.⁶

In a recent Public Notice,⁷ the Common Carrier Bureau provided a list of suggested data items for companies filing study area waiver petitions. The Public Notice provides useful guidance for

⁴ Numerous waiver petitions have been filed for transactions that will have no impact, or even reduce, USF support levels. See, e.g., U S WEST Communications, Inc. and Emery Telephone, Memorandum Opinion and Order, 8 FCC Rcd 4449 (1993); Nemont Telephone Cooperative, Inc. and Valley Rural Telephone Cooperative Ass'n, Inc., Memorandum Opinion and Order, 7 FCC Rcd 6646 (1992); Southeast Mississippi Telephone Co., Inc., Memorandum Opinion and Order, 7 FCC Rcd 3321 (1992); U S WEST Communications, Inc. and Emery County Farmers' Union Tel. Ass'n, Memorandum Opinion and Order, 7 FCC Rcd 6076 (1992). Some telephone company transactions, involve as little as 10 or 20 lines being transferred from one study area to another. See, e.g., Letter of Richard R. Baker, Manager, Farmers Co-Operative Tel. Co. to Kenneth R. Moran, Chief, Accounting and Audits Divisions (Sept. 28, 1993). It is difficult to see the benefit of requiring that waiver requests be filed at all in these cases, let alone the rigid, across-the-board requirements proposed by AT&T.

⁵ See, e.g., U S WEST Communications, Inc. and Range Telephone Cooperative, Inc., Joint Petition for Waiver, AAD 93-84 (filed July 23, 1993).

⁶ See, e.g., letter of September 3, 1993 from Kenneth P. Moran, Chief, Accounting and Audits Division, to Thomas Zarr, Counsel to South Central Utah Telephone Association, Inc., file AAD 93-55.

⁷ Public Notice, "Bureau Provides Suggestions for Parties Filing Study Area Waiver Requests", DA 93-1093 (released September 7, 1993).

companies involved in transactions that may raise significant regulatory concerns. In these cases, companies may avoid delay submitting extensive data with their filings. But if these data reporting requirements are codified in the rules, as AT&T requests, all companies would be required to make equivalent submissions even for changes that have no significant impacts on the USF. This would add unnecessary delay, and would perhaps harm customers in rural areas by requiring them to wait to receive the benefits of promised service upgrades.

Finally, no need has been shown for adopting additional data requirements in the rules. Although AT&T asserts that the USF "could be increased by as much as \$400 million annually, to a total of over \$1.1 billion",⁸ it provides absolutely no support for this estimated increase.⁹ In fact, as NECA and numerous other parties have pointed out in comments submitted in CC Docket 80-286, overall growth in the USF continues to be reasonable, well within the original expectations of the Commission and the Federal/State Joint Board, and not subject to unexplained variations. For all of these reasons, AT&T's petition should be dismissed.

⁸ AT&T Petition at 7-8.

⁹ Apparently, AT&T assumes that large exchange carriers will seek to sell virtually all of their rural, high cost exchanges to other telephone companies, who will then operate them as separate study areas.

II. RATHER THAN INCREASE REGULATORY BURDENS FOR ALL COMPANIES, THE COMMISSION SHOULD INSTEAD ADOPT THE STREAMLINED PROCEDURES FOR HANDLING WAIVER REQUESTS PROPOSED IN CC DOCKET 80-286.

The Commission and the Joint Board are already considering amendments to the rules to allow carriers to change or establish new study areas without waivers or approval from the Commission when (1) combining existing study areas after merger or affiliate operations; or (2) purchasing exchanges or selling exchanges to unaffiliated parties.¹⁰

The specific rule amendments set forth in the Docket 80-286 Notice would require companies involved in such transactions to file certain information, including a description of the transaction giving rise to the proposed change, the state(s) in which the existing and proposed study areas are located, certification that the carriers involved have notified state regulatory authorities of the transaction and/or has obtained state approval; information relating to any conditions imposed by the state agency, the number of access lines and cost per access line for the existing and proposed study areas, and the amount of high cost support for each of the proposed and existing study areas.¹¹ These requirements are reasonable, and are generally followed by companies submitting waiver requests.

The proposed rules also contain a provision that would

¹⁰ Amendment of Part 36 of the Commission's rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990) (Notice).

¹¹ Id. at 5978.

automatically deem proposed study area changes effective, unless the change was stayed, rejected, modified or conditioned by the Commission within 60 days of the filing date of the notification.¹² If these rules were to be adopted, exchange carriers involved in transactions with little or no impact on high cost support could expect to obtain speedy approval of their study area changes. In other cases, the sixty-day notice period would provide ample opportunity for the Commission to identify transactions raising significant issues and take action as necessary.¹³

The Commission should move forward with implementing the rules proposed in CC Docket 80-286. Unlike the overbroad, inflexible data requirements suggested by AT&T, the Commission's 1990 rulemaking proposals were reasonably flexible, and would permit the Commission to tailor its review of individual waiver requests on a case-by-case basis. This approach would reasonably address the concerns identified by AT&T, without placing unnecessary burdens and delay on transactions that do not require scrutiny.

As part of that proceeding, the Commission may wish to consider clarifying the circumstances in which a waiver of the study area definition is actually required. In promulgating the "frozen study area rule," the Joint Board merely sought to prevent

¹² Id.

¹³ Pursuant to section 1.45 of the Commission's rules, interested parties would have at least a 10 day period to file an opposition to a waiver request. The Commission could, if necessary, issue a stay within the sixty-day notice period, and would then have time to request additional data and obtain comment from interested parties before reaching a decision.

companies from "setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support."¹⁴ It makes no sense to require companies to file even streamlined waiver requests when the concerns that underlie the "frozen study area rule" are not implicated in a transaction.

For example, the Joint Board appeared to contemplate that the rule would not apply to consolidations of study areas, or to extensions of service into new areas. In the case of study area consolidations, for example, USF support to the combined area will typically be the same or lower than it would have been had the study areas remained separate as a result of averaging the cost per loop of the combined study areas.¹⁵ Another situation where waivers should not be required is state-initiated boundary realignments.¹⁶ There does not appear to be any need to impose an

¹⁴ MTS and WATS Market Structure, CC Docket Nos. 78-72 and 80-286, Recommended Decision and Order, CC 1001 (released Nov. 23, 1984) at ¶ 66.

¹⁵ This approach is consistent with a Bureau interpretation of the rule set forth in a 1985 letter to NECA from the Chief of the Accounting and Audits Division (copy attached). In that letter, the Bureau confirmed that "letters of interpretation" of the study area rule were necessary only for "sales, transfers or extensions of service territories differing from those situations described in the [Joint Board's] November 23, 1984 Recommended Decision and Order."

¹⁶ For example, the State of Iowa has initiated a broad rulemaking proceeding to examine approximately 820 local exchange franchise maps for compliance with Iowa Utilities Board rules. See State of Iowa, Department of Commerce, Utilities Division, Service Territory Boundary Review, Docket No. Iowa Admin. Code 199-22.20(2) and (3) (1993), Order (issued May 7, 1993). This proceeding may result in numerous adjustments to exchange carrier study area boundaries over the course of several years, each potentially requiring a waiver of the Part 36 study area boundary rule.

additional layer of regulatory review to such changes, which have traditionally been handled at the state level without FCC involvement.

III. THE COMMISSION SHOULD NOT IMPOSE INDIVIDUAL LIMITS ON USF ASSISTANCE AVAILABLE TO SMALL TELEPHONE COMPANIES, NOR LIMIT THE ABILITY OF SMALL TELEPHONE COMPANIES TO PARTICIPATE IN THE NECA POOLS.

AT&T requests that the Commission "cap" the amount of any USF increase resulting from a given transfer.¹⁷ NECA believes that the Commission should not impose limits on individual company USF expense adjustments. Such ad hoc modifications create damaging uncertainty, and may dissuade small telephone companies from entering into purchase agreements that might otherwise be beneficial to customers.

Similarly, there is no basis for requiring exchange carriers engaged in routine transactions to specify NECA pool impacts. Nor should the Commission preclude entry into the NECA TS pool of high cost exchange areas, as AT&T appears to request.¹⁸ NECA typically discusses potential pool impacts of proposed transactions with the involved exchange carriers, and where necessary, can provide this information to the Commission.

USF payments and pool participation decisions should be made in accordance with the Commission's rules as written. Rule revisions should be made, if at all, only after comprehensive review by the Commission, the Joint Board and the industry. The

¹⁷ Id. at 9, n. 13.

¹⁸ See AT&T Petition at 13-14.

rules should not be amended on an ad hoc basis.

IV. CONCLUSION

There is no need to impose broad, inflexible reporting requirements on petitions for waiver of the Commission's study area rule. For most transactions, the data required would not be necessary, and could delay beneficial transactions. Rather than initiate a separate proceeding on AT&T's petition, the Commission should adopt the rule revisions proposed in CC Docket No. 80-286. These procedures would expedite grant of waivers for most transactions, while allowing interested parties and the Commission the opportunity to obtain additional data where necessary. Finally, the Commission should not impose ad hoc limits on the amount of USF funds available to participants in merger and acquisition transactions, or limit participation in the NECA pools.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: 

Richard A. Askoff

Its Attorney

October 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were served this 20th day of October, 1993, by mailing copies thereof by United States Mail, first class postage paid, to the persons listed.

By Christine DeCarlo
Christine DeCarlo

The following party was served:

Francine J. Berry
Robert J. McKee
Peter H. Jacoby
AT&T
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

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Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard A. Askoff
Richard A. Askoff

Its Attorney

October 20, 1993

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 18, 1985

IN REPLY REFER TO:

Mr. Gordon R. Evans
Director - Tariff and Regulatory Matters
National Exchange Carrier Association, Inc.
100 South Jefferson Road
Whippany, New Jersey 07981

Dear Mr. Evans:

In your letter of May 27, 1985, you requested clarification of the Commission's Decision and Order in NTS and WATS Market Structure Inquiry and Amendment of Part 67 of the Rules, CC Docket Nos. 78-72 and 80-286, released December 28, 1984. Specifically, you requested information regarding the Commission's interpretation of the provision concerning frozen study area boundaries for separations purposes. In response to that request, we are providing the following interpretation of the Separations Manual, Part 67 of the FCC Rules and Regulations.

In the Recommended Decision and Order in CC Docket Nos. 78-72 and 80-286, released November 23, 1984, the Joint Board recommended amendment of the term "study area" in the glossary of Part 67 of the FCC Rules and Regulations to read as follows: "Study area - Study area boundaries shall be frozen as they are on November 15, 1984." In discussing the effect of the proposed revision, the Joint Board stated:

Under this approach, an existing company study area purchased by a holding company which owned other companies within the same state could continue to be treated separately for separations purposes. Areas in which telephone service was instituted for the first time could also be treated as a separate study area if separately incorporated. In either case, the parent company would have the option of folding the new service territory into one of its existing companies and using the average NTS costs for the expanded service area in determining the high cost assistance. We expect this to be the case when the benefits of consolidated operations exceed the reduction in high cost support. However, companies would be prohibited from setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support.

On December 28, 1984, the Commission released a Decision and Order in CC Docket Nos. 78-72 and 80-286, which adopted the definition of the term "study area" proposed by the Joint Board.

The basic intent of this language is to ensure that Companies do not set up high cost exchanges within their existing service territory as separate companies to maximize high cost support. This is consistent with the Joint Board's November 23, 1984 Recommended Decision and Order. It should not, however, be interpreted as the "only" prohibition in this regard as it is described in your letter. For example, telephone companies involved in sales, transfers, or extensions of service territories differing from those situations described in the November 23, 1984 Recommended Decision and Order should obtain a letter of interpretation from the Accounting and Audits Division concerning the effect on study area boundaries. The interpretation request should provide information concerning the effect on the company's service territory boundaries and the number of subscribers affected, as well as any available information concerning non-traffic sensitive (NTS) costs for the areas involved.

If you have any questions concerning this response, please contact Arthur Leahy at (202) 632-7500.

Sincerely,



Gerald P. Vaughan
Chief, Accounting and Audits Division